



**TOWN OF WEARE**  
PLANNING BOARD  
ZONING BOARD OF ADJUSTMENT  
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Naomi L. Bolton  
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**Office Hours:**  
Monday  
thru  
Friday  
8 AM – 4:30 PM

**ZONING BOARD OF ADJUSTMENT  
MINUTES  
JANUARY 6, 2009  
(Approved 4/07/09 as amended)**

**PRESENT:** David Ruoff, Chairman; Jack Dearborn; June Purington; Forrest Esenwine; Elwood Stagakis, Alternate; Neal Kurk, Alternate; Naomi L. Bolton, Land Use Coordinator.

**GUESTS:** Art Siciliano, LLS; Ginger Esenwine; James Stapleton; Jeanne Stapleton; Attorney Paul Semple

**I. INTRODUCTION:**

Chairman David Ruoff called this meeting to order at 7:30 PM and asked the board members present to introduce themselves. Chairman Ruoff explained to those present the way by which the board conducts business.

**II. ADMINISTRATIVE ITEMS:**

There were no administrative items for this evening and the board went right to the hearings.

**III. PUBLIC HEARINGS:**

Case #1008 Chester Colburn – Continued Hearing  
Variance, Article 17.1.1  
Applicant is requesting permission to build a single family home.  
Tax Map 102-010 Cottage Road (Private Road)

Art Siciliano was present. Mr. Siciliano explained that Mr. Colburn was admitted into the hospital today and he could not be here tonight and he is not sure how long he will be unavailable. Mr. Siciliano stated that he is not sure how he should handle this. He wasn't sure if he should continue to next month or if he should withdraw and just re-notify the abutters. The board informed Mr. Siciliano that it was entirely up to him. Mr. Siciliano then asked to continue this to next month and there will be a re-notification fee to re-notify the abutters.

Case #0408 James & Jeanne Stapleton – Rehearing  
Variance, Article 17.1.1  
Applicant is requesting permission to build a single family home.  
Tax Map 404-019 Wildwood Road (Private)

James and Jeanne Stapleton and Attorney Paul Semple were present. Attorney Semple gave the board a letter putting the board on notice that he is also the attorney for a family member of Mr. Kurk's. Mr. Kurk stated that he didn't know that Attorney Semple was his relative's attorney. Mr. Kurk stated that he didn't realize there was any relationship and he didn't have any problem sitting on the board. Mr. Kurk felt the letter being brought to the Board's attention could be an effort to keep him from the board, as he was one of the members that voted against this hearing the first time. Chairman Ruoff stated that the decision is his; as chairman he felt that by appointing Elwood Stagakis as the voting member it skirts the issue completely. Chairman Ruoff then appointed Elwood Stagakis as the voting member for tonight.

Attorney Semple stated that this case started in August of 2008. It was continued to September and then to October. In October they made a case. At the time it was denied. In December the board voted to re-hear the case and that is why we are here. In this case, the applicants seek to build a house on a lot they have owned since 1977 (paying taxes on it as an assessed building lot) and that lot is located between two existing houses. The basic objection of this provision of the zoning ordinance is to allow building on a private road only in circumstances where it is equitable and not premature development for the neighborhood. The facts of this case make the variance request the type of request which should be granted a variance. The facts in this case establish that the applicants seek to build a home on a lot between two existing homes on this private road. The abutters have spoken in favor of the application. There is no impact on the Town in any way. There appears to be no way that this application can be contrary to the public interest other than the fact that it requires a variance. The Supreme Court has said that in itself this is not a basis on which to deny the application. Attorney Semple went through the five points of hardship as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: There will be no diminution because they are producing a house that is consistent with the other homes on the lots, similar to the other homes.
2. That the granting of the variance will not be contrary to the public interest because: There are no public funds used to maintain the road. The road is maintained by residents as it is a private road. The road is well maintained. The road is owned by the snowmobile club. A member of the snowmobile club testified that the residents and snowmobilers have co-existed.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
  - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: They are dealing with a situation where they are looking to build in between two existing houses. The lots which have been developed are the ones that already have houses on them.
  - bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: They need relief in order to achieve what they applied for, which is to build a single family home.

4. That through the granting of relief by variance substantial justice will be done because: In general the variance would do substantial justice. It would be consistent with the road.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: It is clearly not contrary to the spirit of the ordinance. One of the previous discussions was that you have an ordinance that does not allow any building on class VI or private roads. But, you have a zoning board for this reason when it is appropriate. If that was the case there would be no need for the zoning board. The zoning board needs to look at the applications and see if there could be other homes built. He felt this is an appropriate case for a variance to be granted. It is accessible by the road. It is between two existing homes. Attorney Semple stated that he is asking the board to exercise their judgment in this case. He feels this situation is appropriate. There is not bad drainage, or the road deteriorated or hilly. This particular road he felt is appropriate.

Attorney Semple further added that two neighbors have been here in support of this application; Jim Clark and Marla Umstead. Ms. Umstead was previously here and spoke in favor of this application, but spoke against an abutting property because of drainage issues the abutting lot may create. The Stapleton's lot is flat and the abutting lot that Ms. Umstead spoke against was hilly and had runoff coming off of it onto the roadway.

Mr. Kurk asked Attorney Semple if he was saying that the Stapleton's should be grandfathered. Attorney Semple responded and said that he felt that they have paid taxes on the lot for 30 years as a house lot and that should have some bearing on the board's decision.

Elwood Stagakis asked who owned the road. Attorney Semple responded that the road was sold to the snowmobile club. Mr. Stagakis stated that he has an issue with not allowing this because it is a lot between two existing homes. He felt that was a unique feature of this lot.

Forrest Esenwine stated that a couple of things stand out to him. Number one, this goes back before zoning, then when zoning came in we had new regulations to go by. State Statute 674:39 says you have a 4 year window in order to begin construction or alter the plans and finish the construction based on the old regulations. After that four year time frame, you have to go by the new regulations. The fact that they paid taxes for 30 years could be an issue. As far as the road is concerned, it's a snowmobile trail, there is no written guarantee it will be maintained.

Mr. Stagakis asked if Attorney Semple went through all five points of hardship. The board agreed that he did, it was a combination of what the Stapleton's had originally included and what was included on his letter requesting the rehearing.

Approving Abutters: NONE  
Disapproving Abutters: NONE  
Other boards: NONE

Public at Large: NONE

Being there we no further comments or questions, Chairman Ruoff closed the public hearing at 8:25 PM.

DISCUSSION: Chairman Ruoff stated that when the board looks through the applications, we seem to look at all the same things; the maturity level of the subdivision, sometimes parts, sections or whole. Applicants have come in here with several applications that have been denied due to the road conditions, etc. Going through the area variance requirements of this, it is difficult to look at this from the other lots. It's easier to differentiate down toward the end of the roadway. He likes to honor what the Town enacted on the real dangerous roads. But looking at this he can live with granting relief on this lot, but he hasn't seen or heard anything different from the last time. He doesn't see the slippery slope argument that would persuade him from changing his mind.

Mr. Kurk stated that he felt that the problem with this is we are creating a situation, but the residents of the Town are expecting this board to act consistently. There is an economic issue here. Some of you may know Lafrance Road which is off Mt. Dearborn Road. A resident had a bad fire but for the fact that the road was in bad condition the fire department couldn't get there and the house burned down. The owner made his plea to the Town and it was done and now it is a Town Road. It is those kinds of things that led the Town to adopt article 17.1.1. Again, you can distinguish this from other lots.

Mr. Esenwine stated that he felt that one of the criteria the board has used is if this development is substantially completed and that is all that is remaining, then the board has seen fit to approve something like that. He felt this situation is no where near that type of issue.

Jack Dearborn stated that when he sits on the board which he has done for the last 20 years he looks to see the build out around the lot. We have granted relief for others with conditions of posting the road, deed restriction, upgrading the road under the guidance of the Town's public works director. He can distinguish this from other lots. He can support this application.

Mr. Stagakis stated this is substantially an unfinished project. He doesn't want to approve another lot and keep up the trend. He feels that the unique part of being located between two houses and feels that is really unique, but he doesn't want to grant any more houses on this road to keep up the trend.

June Purington believes in taking each case as it is today, not tying to what may or may not happen in the future. We are dealing with this request only.

CASE DECISIONS: Point #1: Jack Dearborn moved to accept point #1; June Purington seconded the motion. Discussion: none. Vote: 5 in favor (Dearborn, Purington, Ruoff, Esenwine and Stagakis). Point #2: June Purington moved to accept point #2; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine stated that he thinks the public

interest as stated in the previous discussion in looking at the ordinance and what it was intended to do. As Mrs. Purington previously stated that we can't look down the road, but Mr. Esenwine stated that he thinks it is incumbent on us to take that into consideration. We are looking at things that have a lasting affect on the future. Vote: 4 in favor (Dearborn, Purington, Ruoff and Stagakis) and 1 opposed (Esenwine). Point's #3aa & #3bb: Jack Dearborn moved that the board take point's #3aa and #3bb together; June Purington seconded the motion. Vote to act on both points together: 5 in favor (Dearborn, Purington, Ruoff, Esenwine and Stagakis). June Purington moved to accept point's #3aa and #3bb; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine stated that he would just like the minutes to reference the prior discussion of point #2. Vote: 4 in favor (Dearborn, Purington, Ruoff and Stagakis) and 1 opposed (Esenwine). Point #4: Jack Dearborn moved to accept point #4; June Purington seconded the motion. Discussion: None. Vote: 4 in favor (Dearborn, Purington, Ruoff and Stagakis) and 1 opposed (Esenwine). Point #5: Jack Dearborn moved to accept point #5; June Purington seconded the motion. Discussion: Mr. Esenwine stated that he thinks it is contrary as we previously discussed and his biggest issue is the ownership of the road and is very concerned. Mr. Stagakis stated that we have five existing houses on that road and to him it is the unique position. Vote: 4 in favor (Dearborn, Purington, Ruoff and Stagakis) and 1 opposed (Esenwine).

Jack Dearborn moved to accept case #0408 with the following conditions:

1. The access to the lot (Wildwood Road) needs to be upgraded under the direction of the Public Works Director to a performance standard acceptable to the Public Works Director, and the actual owners of the road, to allow the safe passage of emergency vehicles from Abijah Bridge Road to the driveway of the subject property. All upgrade needs to be inspected prior to the issuance of a building permit AND prior to the issuance of occupancy permit.
2. Town of Weare Liability Disclaimer to be attached to the building lots deed and be recorded at the Hillsborough County Registry of Deeds as part of the deed, approved by Town Counsel.
3. Private Road sign to be posted at the entrance of the road.

Elwood Stagakis seconded the motion. Vote: 4 in favor (Dearborn, Purington, Ruoff and Stagakis) and 1 opposed (Esenwine).

#### **IV: OTHER BUSINESS:**

NOVEMBER 4, 2008 MINUTES: Forrest Esenwine moved to approve the November 4, 2008 minutes as amended; June Purington seconded the motion, all in favor.

DECEMBER 2, 2008 MINUTES: Forrest Esenwine moved to approve the December 2, 2008 minutes as amended; June Purington seconded the motion, all in favor.

MINUTES DISCUSSION: Neal Kurk wanted to thank Forrest Esenwine for taking the time to read the minutes in detail, however there is a certain selectman that takes an enormous amount of time to do that as well and he thinks there is a better way of doing it. He suggested to simply having Mr. Esenwine get the minutes with the corrections to

Naomi and she can put the modified set of minutes out to the rest of the board. One of the concerns is that if we volunteer it would be nice to streamline things like minutes.

**V. ADJOURNMENT:**

As there was no further business to come before the board, Forrest Esenwine moved to adjourn the meeting at 9:07 PM; Chairman Ruoff seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton  
Land Use Coordinator